

REFERENCE NO - 18/501181/FULL

APPLICATION PROPOSAL

Proposal: s73 application: Variation of conditions 10, 16 and 17 of application 16/508659/FULL (Demolition of existing dwelling and erection of B8 warehouse building with ancillary offices, dock levellers, access, parking and landscaping including the creation of new woodland and attenuation pond.) to amend condition 10 to refer to 'a maximum of 32 one-way HGV movements (equivalent to 16 HGVs entering and leaving the site) are permitted between hours of 2300hrs and 0700hr', condition 16 to refer to the Noise Mitigation Plan Ref: 403.06466.00004.001 version 5; condition 17 to refer to the Noise Mitigation Plan Ref: 403.06466.00004.001 version 5 and a rating level maintained no greater than 3dB above the existing measured ambient noise level LA90, T during the day time and night time periods.

ADDRESS Land South Of Redwall Lane Linton Kent

SUMMARY OF REASONS FOR RECOMMENDATION

The principle of the development is established by MA/16/508659/FULL.

Conditions needs to comply with the all the statutory 6 tests for a planning condition.

The Environmental Statement for MA/16/508659/FULL has been taken into account equally in the determination of this application. The information in it is considered to be adequate for the determination of significant environmental effects arising from the changes to the 3 conditions sought.

Altering condition 10 to refer to up to 32 one-way movements is an acceptable change for this type of business.

Version 5 of the Noise Management & Mitigation Plan needs to be referred to in condition 16 but otherwise the need to meet the Noise Rating Curve 30 externally remains.

Condition 17 can be amended to refer to Version 5 of the Noise Management & Mitigation Plan and the limitation be raised to +3dB above ambient as that would not be a perceptible increase and can be met by the scheme if the mitigation plan is followed in full.

Other conditions need to be updated to reflect that the development has commenced and that some other conditions have been discharged already in 17/505223/SUB and 18/501238/SUB.

REASON FOR REFERRAL TO COMMITTEE

The application was deferred from the Planning Committee of 26 July 2016 for the following reason: to enable further negotiations with the applicant regarding the redrafting of condition 10 (formerly 9) to specify a time limit in months when the up to 32 in or out movements is permitted (for example, 1 November to 31 May) with a lower threshold for the months outside this time frame.

The application was originally called into Committee by the Parish Councils of Linton and Hunton and the recommendation is contrary to the views of the Parish Councils of Linton, Hunton, Loose and Chart Sutton which all object to the application

WARD Coxheath And
Hunton

**PARISH/TOWN
COUNCIL** Linton

APPLICANT Alan Firmin
Ltd

AGENT Mr Tim Spicer

TARGET DECISION DATE

21/08/18

PUBLICITY EXPIRY DATE

17/07/18

1. BACKGROUND

- 1.01 The application was deferred from the Planning Committee of 26 July 2016 to enable further negotiations with the applicant regarding a seasonal time limit in months when the up to 32 in or out movements is permitted with a lower threshold for the months outside this time frame.
- 1.02 The original committee report and minutes are attached as an **Appendix A**. Please note that the National Planning Policy Framework has been revised and paragraph 32 is now paragraph 109 and paragraphs 203 and 206 are now paragraphs 54 and 55 respectively.

2. RESPONSE OF THE APPLICANT

- 2.01 The agent summarises that the intended occupant, Berry Gardens, have given very careful consideration to the prospect of accommodating a seasonal restriction on night-time HGV movements but it has not been possible for them to accommodate this request. The agent states that it is evident from the data logs for night time HGV movements presented to MBC whilst there is an overall seasonality to the business there is no identifiable pattern for night time HGV movements with fluctuations occurring from day to day, week to week and month to month: the data logs highlight the reactive nature of the business with regards to its supply chain and the genuine need for flexibility sought.
- 2.02 The agent understands the reasons for Members wishing to seek a seasonal restriction, given the nature of the business they do not believe that a condition in the format Members wish to impose would meet either the reasonableness or necessity tests set out in the NPPF particularly as the application is supported by technical assessments and the Council's

Environmental Health Department and other consultees offer no objection to the application. They trust Members will understand Berry Gardens' reasons for the need for flexibility in the format sought and why they are unable to accept a seasonality restriction.

2.03 Berry Gardens themselves states:

- Their business need to align to varied and expanding customer demands
- Market share is won and lost on supply chain performance.
- 24 hour and on-line shopping means orders have to be delivered on time and in full on a daily basis, ensuring pre-determined depot receipt times are adhered to
- a flexible and dynamic approach is needed for both HGV arrival and dispatch times
- events out of control would be a change in retailer depot receipt times, new business developments with new customers, road closures, traffic delays, a reduction in available UK haulier fleets, delays at the ports
- The busiest peak import period is December to May but the need for flexibility with regard to night time HGVs is not dependent on the seasonal changes
- data logs of night time HGV movements show that there is no real pattern or seasonality, reflective of the reactive nature of the business and Supply Chain Management.
- Analysis of a number of previous years HGV logs identifies no consistent pattern in night-time HGV movements

3. REPRESENTATIONS

3.01 Reconsultations have been carried out on this additional information which expires on 5 September 2018. Any views and comments received will be reported in the urgent update papers.

4. ASSESSMENT

4.01 Members are reminded of the 6 tests for planning conditions in the NPPF

"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations"

"Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

4.02 The NPPG advised on s73 applications:

"Following the decision of a local planning authority to grant planning permission subject to conditions, a developer may consider taking the following actions if they do not wish to be subject to a condition....Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990.

In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question."

4.03 In terms of the proposed increase in night-time HGV movements compared to the condition in the original planning permission, I would draw Members' attention to the following. Referring back to the applicant's noise study for 16/508659/FULL, footnote 6 on page 7-20 of the Environmental Statement to the parent planning permission assessed 1 HGV loading or unloading per hour in the night-time period, meaning 8 HGVs would enter and would leave ie 16 movements.

4.04 Paragraph 6.63 of the committee report for 16/508659/FULL explained and justified condition 10 as follows:

"considered necessary to restrict the number of vehicles as proposed by the applicant, no more than 8 (1 per hour) during these hours and a condition to require the applicant to keep records of vehicle movements for review if necessary."

4.05 The condition that was intended to reflect the assessment of 8 vehicles using the loading bays in the noise report, was unfortunately written in an ambiguous way by not referring to overall usage by 8 HGVs but to "entering or leaving". Essentially the condition as imposed on the planning permission did not correctly reflect the contents of the noise report, the representation of the Environmental Protection officer nor the committee report. Therefore an application to vary the condition to more accurately reflect the contents of the committee report and the application documents would be difficult to successfully resist.

4.06 This application is seeking the equivalent of 16 HGVs using the loading bays which is a doubling from what was assessed in the noise report to the parent planning permission.

4.07 An applicant has the prerogative to seek a variation of a planning condition at any time once it has been granted and that must be considered on its merits in the light of the 6 tests.

4.08 In response to the deferral, data logs from Berry Gardens that the agent refers to show that for 2017, the months of the maximum number of peak night-time HGVs was April, May, August and September. The maximum average night-time peaked in May and August. However, they have clarified that the variations on the HGV traffic are not related to seasonal

factors as such but to other operational matters which cannot be forecast and accordingly they are formally resisting any seasonal variation of the condition as sought by in the resolution of the last Planning Committee.

- 4.09 Members are advised that under a Section 73 application, it is not reasonable to impose conditions, that are more restrictive than the original planning permission. Any seasonal restriction HGVs that are permitted to enter or leave at night would have to be on the additional vehicles, which would result in a condition that fails the NNPf tests by being unreasonable, unenforceable and imprecise
- 4.10 I remain of the view that in the policy framework of s73 application and planning conditions as detailed above, the conditions can be amended as requested by the applicant as they remain reasonable in the light of the issues as were appraised.
- 4.11 In summary the key points in the main report with regard to HGV numbers remain:
- This s73 application does not intend to increase the numbers of HGVs overall each day but is intended to give flexibility to the times in which they can visit the site to unload or load. The trips generated to and from the development have no severe residual impacts simply based on them occurring at a different time within the 24 hour day.
 - for reasonableness and precision, it is necessary to factor in contingency for the worst case scenario to give flexibility to factor in either individually or in combination, matters such as peak seasons, the terms of contracts with suppliers and/or customers and any traffic circumstances beyond their control. The nature of the fruit products sold is that delays to loading or unloading need to be avoided as far as possible to minimise degradation.
 - Planning conditions cannot legally be imposed on the highway network outside the application site. There is a risk of a situation whereby any HGVs that would breach the existing night-time condition would need to wait on the public road until after 0700hrs to enter the site.
 - changes to the condition would not result in any significant harm to amenity to warrant refusal, bearing in mind the general prevalence of night-time HGV traffic in the locality and the unfettered hours of operation that exist at Berry Gardens' premises in Redwall Lane.

5. RECOMMENDATION

GRANT planning permission subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: DHA/11488/01 SITE LOCATION PLAN; DHA/11488/02 EXISTING SITE PLAN; DHA/11488/11 REV B ELEVATIONS; TEQ/1817-04D SITE LAYOUT/LEVELS; 3874DR001 rev H LANDSCAPE STRATEGY; 3874DR002 rev H LANDSCAPE MASTERPLAN; TEQ 1817-03D INDICATIVE SECTIONS; WM/512/P/12/rev2 ROOF PLAN; WM/511/P/15/ rev2 MEZZAINE FLOOR; WM/511/10/rev3 GROUND

FLOOR; DHA/11485/03A SITE LAYOUT; TRANSPORT ASSESSMENT AND APPENDICES; ENVIRONMENT ASSESSMENT AND ES TECHNICAL NOTES; FLOOD RISK ASSESSMENT; LANDSCAPE AND ECOLOGY MANAGEMENT PLAN MARCH 2017 and emails received from DHA dated 18 July 2018 and 20.08.18.

Reason: To clarify which plans have been approved.

- 2) The materials to be used in the development hereby approved shall be as indicated on the approved plans DHA/11488/11B unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory appearance to the development

- 3) The development shall be completed in accordance with the hard landscaping approved as part of permission 18/501238/SUB before the first occupation of the building hereby permitted.

Reason: To ensure a satisfactory appearance to the development.

- 4) The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them.

Reason: In the interests of highway safety and to ensure efficient internal movements within the site

- 5) The approved details of the access points as shown on plan 11487-H-01 shall be completed before the commencement of the use of the land or buildings hereby permitted and the sight lines maintained free of all obstruction to visibility above 1m thereafter.

Reason: To ensure highway safety of the site and the locality.

- 6) The development shall be completed in accordance with the fencing and boundary treatments approved as part of permission 17/505223/SUB and shall thereafter be installed and permanently retained.

Reason: To protect the amenity of adjoining occupiers and ensure a good standard of design is achieved.

- 7) No use of the development hereby permitted shall take place until the following off-site highways improvements have been completed.

(a) Extension of the existing 40mph speed limit to the south of the Redwall Lane junction with the A229.

(b) Creation of access points to site including installation of a Bollard to prevent westerly HGV travel on Redwall Lane from the north west access point

(c) Improvements to Redwall Lane and Junction of Redwall Lane and A229 as set out in the Transport Assessment

Reason: to ensure appropriate highway conditions are maintained within the locality

- 8) The development hereby permitted shall be carried out strictly in accordance with the slab level shown on the approved drawing TEQ1817-04D.

Reason: In order to secure a satisfactory form of development having regard to the topography of the site.

- 9) The development shall be carried out in accordance with the final site levels approved as part of permission 17/505223/SUB and retained as approved thereafter.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

- 10) The control and monitoring of the movement of HGVs shall be in accordance with the scheme approved under 17/505223/SUB. This scheme should be implemented and operated at all times and shall be available for review by the Local Planning Authority. There shall be no more than 32 in or out movements to the site by HGVs between the hours of 2300hrs and 0700hrs.

Reason: In the interests of local amenity.

- 11) The development hereby approved shall be constructed in accordance with the approved construction method statement pursuant to permission 17/505223/SUB.

Reason: To protect the amenity and highway safety of the area during the construction phase.

- 12) The surface water drainage scheme for the site shall be implemented in accordance with approval 17/505223/SUB unless otherwise agreed in writing with the Local Planning Authority and shall be retained thereafter. The scheme shall be implemented prior to use of the building and thereafter managed and maintained in accordance with the details of a management and maintenance plan submitted for the approval of the Local Planning Authority which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure ongoing efficacy of the drainage provisions.

- 13) No storage of oils and fuels are to be stored on site within 10m of the river edge or any field drain, ditches (including field ditches) and other surface water system which are connected to the SSSI. Any other storage to take place within the site must be stored in a bunded tank or mobile container that complies with current regulations.

Reason: To protect the ecological interests of the River Beult SSSI

- 14) The approved landscaping details shall be carried out during the first planting season (October to February) following first occupation of the building. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

- 15) The proposed building shall achieve at least a BREEAM Very Good level. A final certificate should be issued within 6 months of first occupation of the building to confirm the Very Good BREEAM rating has been achieved.

Reason: To ensure efficiency use of natural resources and achieve sustainable energy production in line with Policy DM2 of the Maidstone Borough Local Plan.

- 16) The development shall be carried in with the mitigation measures in Noise Management & Mitigation Plan Ref: 403.06466.00004.001 Version 5 including the sound insulation of the building and all plant and Equipment to ensure that noise generated by plant and Equipment at the development shall not exceed Noise Rating Curve NR30 (as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and the Chartered Institute of Building Engineers Environmental Design Guide 2006) at the boundary to any noise sensitive property. All plant and equipment shall be maintained in a condition such that it does not exceed NR30 as described above, whenever it is operating. No new plant or ducting system shall be used without the prior approval of the Local Planning Authority.

Reason: To protect the amenity of the area.

- 17) The development shall be carried in accordance with the approved Noise Management & Mitigation Plan Ref: 403.06466.00004.001 Version 5. The rating level of noise emitted shall be maintained at a level no greater than 3dB above the existing measured ambient noise level LA90,T during the day time and night time periods respectively. All activity on the site thereafter shall be carried out in accordance with this plan.

Reason: To protect the amenities of the surrounding area

- 18) Prior to the first use of the premises, details of any plant (including ventilation, refrigeration and air conditioning) or ducting system to be used in pursuance of this permission shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details

Reason: To protect the amenities of the area

- 19) Before the first occupation of the building hereby permitted, the development shall be completed in accordance with permission 18/501238/SUB in terms of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved. All features shall be retained thereafter.

Reason: To ensure an energy efficient form of development

- 20) The building hereby permitted shall not be occupied until details of any lighting to be placed or erected within the site have been submitted to and approved by the Local Planning Authority. The submitted details shall include, inter alia, details of measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors. The development shall thereafter be carried out in accordance with the approved details.

Reason: In the interest of amenity.

- 21) Prior to the occupation of the building(s) hereby permitted, 18 parking spaces to be served by electric vehicle charging points shall be installed and shall thereafter be retained for that purpose.

Reason: To promote the reduction of CO2 emissions through the use of low emissions vehicles in accordance with paragraph 35 of the National Planning Policy Framework.

- 22) The development hereby approved shall be completed in accordance with permission 18/501238/SUB in terms of cycle storage facilities on the site. The approved facilities shall be provided before the first occupation of the building and retained thereafter.

Reason: In the interest of amenity and sustainability.

Informative

- 1) The s106 legal agreement for 16/508659/FULL applies to this planning permission.